IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFA No. 53 of 1999

Date of Decision: 24th December, 2007

Dilbag Singh and others	Appellants
Versus	
Punjab National Bank and others	Respondents.

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant: Mr. Ajay Sharma, Advocate.

For the respondent No.1: Ms.Devyani Sharma, Advocate

None for respondents No.2 and 3.

Sanjay Karol, J. (Oral)

The present appeal arises out of judgment dated 1st January, 1999 passed by District Judge, Una, in Civil suit No. 8 of 1995, titled as Punjab National Bank vs. Dilbag Singh and others, decreeing the suit of the plaintiff to the extent of Rs.1,33,140/- alongwith interest pendente lite and future alongwith costs.

Pursuant to defendant No.1's application dated 9.11.1990 a sum of Rs.1,20,000/- was sanctioned by the plaintiff in his favour on 19.1.1991 for purchase of a tractor. The loan amount was disbursed and various documents were executed in relation to the said transaction. Defendant No.1 failed to repay the loan amount and consequently plaintiff

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

filed a suit for recovery of Rs.2,28,970-00 alongwith interest @ 17.5% per annum with quarterly rests.

The suit was resisted by the defendant on the ground that the claim was barred by limitation and that the Court did not have jurisdiction to decide the suit. On merits, the fact that the plaintiff had in fact disbursed the loan amount, on the request of defendant No.1, however, was not disputed.

Based on the pleadings of the parties, the Court below framed the following issues:-

"1. Whether the plaintiff is entitled to the amount in suit, if so, to what extent? OPP

2. Whether the suit is not within time, as alleged? OPD.

3. Whether this Court has no jurisdiction to try the suit as alleged? OPD.

4. Whether the plaintiff is not properly represented and has no cause of action to file the suit as alleged? OPD.

5. Whether the defendants had agreed for simple rate of interest, if so, to what extent, as alleged? OPD.

6. Whether defendant No.5 did not stand guarantor for repayment of the loan, as alleged? OPD.

7. Relief."

Based on the evidence as well as other material on record, the Court below decided Issue No.1 in favour of plaintiff and issues No.2 to 6 against the defendants. However, the suit was decreed only to the extent of Rs.1,33,140/- alongwith costs and interest @ 14% per annum with half yearly rests with effect from 9.10.1991 till the realization of the decretal amount.

The aforesaid judgment and decree 1st January, 1999 is subject matter of challenge before this Court.

The fact that defendant No.1 had approached the plaintiff for sanction and disbursement of loan amount of Rs.1,20,000/- is not disputed in the written statement. In order to prove its case, the plaintiff has examined three witnesses, namely, Sh. Keshwa Nand, Manager, Saloh Branch (PW-1), Sh. Ashok Kumar, Assistant Manager, Behdala Branch (PW-2) and Sh. S.N.Sharma, Manager, Behdala Branch (PW-3). Shri Dilbag Singh, defendant No.1 has examined himself as DW-1.

As per version of PW-1, based on the application (Ext.PB) moved by defendant No.1 Sh. Dilbag Singh, term loan of Rs.1,20,000/- for purchase of tractor was sanctioned in terms of Ext.PC. Defendants Ajaib Singh, Kabul Singh, Gurmej Kaur, Kanti Parkash and Bakshish Singh executed guarantee deeds Ext.PE and Ext.PF in favour of plaintiff-Bank. The deed of hypothecation Ext.PG was also executed by defendant No.1 in favour of plaintiff-Bank. The loan was sanctioned and agreement Ext.PD was executed. The loan was disbursed on 19.1.1991. Defendant No.1 miserably failed in repay the installments due and consequently as on 21.5.1995 a total sum of Rs.2,28,970/- became due and payable by him as per books of account of plaintiff-Bank.

PW-2 has proved the balance confirmation of loan amount vide letter dated 9.8.1992 (Ext.PH). In terms of said balance confirmation letter as on 31.3.1992 a sum of Rs.1,34,940/- stood due and payable by the defendant No.1 to plaintiff.

PW-3 has proved on record statements of accounts Ext.PW-3/D, Insurance Policies Ext.PW-3/C, Ext.PW-3/C-1 to Ext.PW-3/C-4 and the legal notice dated 12.6.1993 (Ext.PW-3/D) asking defendant No.1 to repay the loan amount.

Defendant No.1 has stepped into the witness box and deposed that though documents in question were executed at the time of sanction of loan but all of them were left blank which were subsequently filled in by the bank. The letter confirming the balance was not written by him and the blank documents having his signatures were used by the Bank for the purpose of overcoming the limitation period.

From the evidence on record as also the stand taken by defendant No.1 in the written statement, it is proved on record that plaintiff had actually applied for sanction of loan vide his application Ext.PB and a sum of Rs.1,20,000/- was duly sanctioned in terms of Ext.PC in favour of defendant No.1. Hypothecation deed as also deed of guarantee were executed by defendants in favour of plaintiff-Bank. Defendant No.1 made certain payments towards repayment of said loan amount is admitted by him. Ext.PH is the balance and security confirmation letter. The same stands duly proved by PW-2, who has stated that the same was got executed in his presence from defendant No.1 at his residence. His statement is cogent, clear and reliable and is supported by the version of PW-3 and Ext.PW-3/D.

Learned counsel for the appellant has argued that the suit filed by plaintiff is barred by limitation. Submission of learned counsel in view of the statement of PW-2 and Ext.PH needs to be rejected. The Balance Confirmation Letter is dated 9.8.1992 and the suit was filed on 22.5.1995. Defendant No.1 has also not disputed his signatures on the said document. It is not the case of defendant No.1 that he had responded to the legal notice. Prior to the filing of the suit he never raised the plea of having signed blank documents at the time of release of the loan amount. It would, therefore, not

lie in his mouth to raise this plea and in my view the Court below has rightly held that the suit of the plaintiff was filed within the period of limitation.

Learned counsel for the appellant has further argued that the loan was disbursed for an agricultural purpose and interest awarded by the Court below @ 14% with half yearly rests is contrary to the instructions of the Bank and the agreement signed between the parties.

Perusal of sanction letter Ext.PC and also agreement Ext.PD would show that parties have agreed that loan amount would carry interest @ 4% over and above the Reserve Bank of India rate with minimum of 14% per annum with half yearly rests. In view of the specific agreement between the parties, it, therefore, cannot be said that plaintiff could not have charged or that defendants were not liable to pay interest on the agreed terms. In the plaint, the plaintiff has claimed interest @ 17.5% per annum with quarterly rests. However, the Court below has awarded interest only @ 14% per annum with half yearly rests. The finding of the Court below, in my view, are totally correct and supported by the material on record. The submission of the learned counsel, therefore, on this count is also unacceptable.

It is only clarified that the finding of the Court below has not been assailed by the plaintiff by filing an appeal.

For the aforesaid reasons, I find no merit in the appeal and the same is hereby dismissed. However, there shall be no order as to costs.

24th December, 2007
(C)

(Sanjay Karol)
Judge.